



SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-94980; File No. SR-ICC-2022-003]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Governance Playbook

May 25, 2022.

I. Introduction

On April 4, 2022, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4,² a proposed rule change to revise the ICC Governance Playbook.³ The proposed rule change was published for comment in the Federal Register on April 12, 2022.⁴ The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

The ICC Governance Playbook consolidates governance arrangements set forth in ICC’s Rules, operating agreement, and other ICC policies and procedures. The Governance Playbook contains information regarding the governance structure at ICC, including the Board, committees, and management.

B. Changes to the Governance Playbook

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms used but not defined herein have the meanings specified in the Rules and Governance Playbook.

⁴ Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Governance Playbook; Exchange Act Release No. 34-94616 (Apr. 6, 2022), 87 FR 21687 (Apr. 12, 2022) (SR-ICC-2022-003) (“Notice”).

The proposal would make clarifications and updates regarding the roles and responsibilities of the ICC Legal Department and internal committees involved in the governance process.⁵ Specifically, the proposal would amend Section I of the Governance Playbook, which describes the purpose of the document, to state that the ICC Legal Department will review and amend the Governance Playbook as needed when there are circumstances that may impact the governance procedures of ICC, such as regulatory changes or changes in ICC's structure or practices.

The proposal would also amend Section III.H, which contains information on disclosures that ICC is required to make to regulators, Clearing Participants, and the public. ICC maintains a public Disclosure Framework that describes its material rules, policies, and procedures regarding its legal, governance, risk management, and operating framework. The proposal would add additional details on the process of updating this Disclosure Framework. Specifically, the proposed rule changes would amend this section to state that the Legal Department would determine when changes to the Disclosure Framework are necessary and that it will update the document every two years or more frequently as necessary. Additionally, the proposal would revise Section III.H to include regulations applicable to Disclosure Framework updates, a related change to spell out an abbreviated term for consistency, and to define what constitutes a material change that would require a Disclosure Framework update. Finally, the proposal would revise this section to incorporate procedures for reporting Disclosure Framework changes pursuant to applicable regulations.

The proposal would also amend Section IV of the Governance Playbook, which discusses various committees. Specifically, the proposal would update the description of the membership composition of the Steering Committee by including amended titles and

⁵ The description that follows is substantially excerpted from the Notice, 87 FR at 21687-21688.

positions in order to be consistent with the membership composition set out in the Steering Committee's charter, and removing outdated information regarding the Steering Committee's membership from the Governance Playbook. The Steering Committee continues to review, approve and oversee the implementation of CDS product launches and initiatives.

Additionally, the proposal would add a section discussing the CDS Service Review committee, including its description, membership composition, meeting frequency, and relevant documents. According to ICC, this is not a new committee. Its purpose is to discuss and review the status of active ICC initiatives to report on the delivery process and technology delivery-related activities (e.g., development, testing), and its proposed addition to the Governance Playbook is for transparency and completeness in order to ensure that the Governance Playbook includes all groups relevant to ICC's governance process.⁶

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.⁷ For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act⁸ and Rules 17Ad-22(e)(2)(i) and Rule 17Ad-22(e)(23)(v).⁹

A. Consistency with Section 17A(b)(3)(F) of the Act

⁶ See Notice 87 FR at 21688.

⁷ 15 U.S.C. 78s(b)(2)(C).

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 17 CFR 240.17Ad-22(e)(2)(i) and 17 CFR 240.17Ad-22(e)(23)(v).

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.¹⁰ Based on its review of the record, and for the reasons discussed below, the Commission believes the proposed changes to the Governance Playbook are consistent with the promotion of the prompt and accurate clearance and settlement of transactions at ICC.

As noted above, the proposed rule change would make clarifications and updates regarding the roles and responsibilities of the ICC Legal Department and internal committees involved in its governance processes. Specifically, the proposal would amend Section I of the Governance Playbook, which describes the purpose of the document, to state that ICC's Legal Department will review and amend the Governance Playbook as needed when there are circumstances that may impact the governance procedures of ICC, such as regulatory changes or changes in ICC's structure or practices. Further, as noted above, the proposed changes would amend Section III.H to include additional details on the process of updating the public Disclosure Framework and cite related regulatory requirements for doing so.

The Commission believes that the changes to sections I and III.H would enhance the effectiveness of ICC's governance documents by ensuring that users of the Governance Playbook are aware of who is responsible for reviewing and amending the Governance Playbook and the circumstances necessitating such amendments. Likewise, the Commission believes that by including additional details on the process of updating the Disclosure Framework along with citations to related regulatory requirements for doing so, the proposed rule change would enhance the ability of users of the Governance

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

Playbook to carry out their duties. The Commission believes that this in turn will provide clear governance arrangements that support ICC's compliance with relevant regulations and procedures, thereby helping ICC maintain effective risk management processes to promote the prompt and accurate clearance of settlement and securities transactions and derivative agreements, contracts and transactions cleared by ICC.

Additionally, as noted above, the proposal would update the membership composition of the Steering Committee by including amended titles and new positions and removing outdated information regarding the Steering Committee's membership composition from the Governance Playbook. The Commission believes that these updates help the Board, as well as ICC's management, employees, and members, to be updated on the roles and responsibilities of ICC officers, committees and subcommittees. As noted above, the proposal would also incorporate into the Governance Playbook information (its description, membership composition, meeting frequency, and relevant documents) about a current committee, the CDS Service Review committee. The Commission believes that by including information about an existing governing committee in the Governance Playbook, the proposal would support ICC's ability to carry out duties related to active ICC initiatives. Taken together, the Commission believes that these changes to committee information could support ICC's ability to manage product launches and other active initiatives and therefore facilitate ICC's ability to provide clearing services that are supported by clear risk management processes that promote the prompt and accurate clearance of settlement and securities transactions and derivative agreements, contracts and transactions cleared by ICC.

For the reasons stated above, the Commission therefore believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.¹¹

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

B. Consistency with Rule 17Ad-22(e)(2)(i)

Rules 17Ad-22(e)(2)(i) requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to, as applicable, provide for governance arrangements that are clear and transparent.¹² As described above, the proposed changes more clearly set out the responsibilities of the Legal Department and include updates with respect to relevant internal individuals and committees involved in the governance process. The Commission believes that by clearly describing the responsibilities of the Legal Department, committees, subcommittees, and their participants as noted above, these proposed changes provide for clear and transparent governance arrangements to those serving on those committees and utilizing the Governance Playbook. For the reasons stated above, the Commission believes the proposed rule changes are consistent with Rules 17Ad-22(e)(2)(i).¹³

C. Consistency with Rule 17Ad-22(e)(23)(v) under the Act

Rule 17Ad-22(e)(23)(v) under the Act require each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an update of the public disclosure every two years, or more frequently following changes to the covered clearing agency's system or the environment in which it operates to the extent necessary, to ensure statements previously provided remain accurate in all material respects.¹⁴

As noted above, the proposed changes assign responsibility, reference applicable regulations, and include additional information and procedures regarding maintaining and updating the Disclosure Framework in accordance with relevant regulations.

¹² 17 CFR 240.17Ad-22(e)(2)(i).

¹³ Id.

¹⁴ 17 CFR 240.17Ad-22(e)(23)(v).

Specifically, the proposed changes would update the process by which the ICC Legal Department will update the public Disclosure Framework every two years or more frequently following material changes to ICC's systems or environment in which it operates, including updates for major decisions of the Board with a broad market impact. The Commission believes that these aspects of the Governance Playbook provide further clarity regarding ICC's policies and procedures for making a comprehensive public disclosure that is updated every two years or more frequently following material changes.

For these reasons, the Commission believes that the proposed rule change is consistent with Rule 17Ad-22(e)(23)(v) under the Act.¹⁵

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act¹⁶ and Rules 17Ad-22(e)(2)(i) and 17Ad-22(e)(23)(v) thereunder.¹⁷

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act¹⁸ that the proposed rule change (SR-ICC-2022-003), be, and hereby is, approved.¹⁹

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

¹⁵ 17 CFR 240.17Ad-22(e)(23)(v).

¹⁶ 15 U.S.C. 78q-1(b)(3)(F).

¹⁷ 17 CFR 240.17Ad-22(e)(2)(i) and (e)(23)(v).

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁰ 17 CFR 200.30-3(a)(12).

J. Matthew DeLesDernier,
Assistant Secretary.

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